to the evidence and in denying the motion for mistrial. (S.A.1, 6). There was no reference to any federal constitutional claim. In fact, his argument to the SJC did not cite to any cases. To the extent that the petitioner now asserts a federal constitutional claim, the SJC was not sufficiently alerted to the federal nature of the claim. See e.g., *Gagne v. Fair*, 835 F.2d 6, 7 (1st Cir. 1987) ("oblique" invocation of phrase "due process" not enough).

Indeed, like the petitioner in *Mele v. Fitchburg District Court*, 850 F.2d 817 (1st Cir. 1988), this petitioner "ma[d]e no explicit constitutional argument," concerning his claims presented to this Court in ground one of his petition. "[F]ederal habeas oversight is not a freewheeling construct. It is dependent, among other things, upon all the claims asserted in the petition having been exhausted in the state courts." *Martens v. Shannon*, 836 F.2d at 717. "It would be unseemly in our dual system of government for a federal district court to upset a state court conviction without an opportunity to state courts to correct a constitutional violation." *Picard v. Connor*, 404 U.S. at 275, quoting *Darr v. Burford*, 339 U.S. 200, 204 (1950). Because the petitioner has not "fairly presented the substance of this federal habeas claim to the state court before seeking federal review," *Gagne*, 835 F.2d at 7, his petition should be dismissed as containing an unexhausted claim.

Respectfully submitted,
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